

STATE OF MICHIGAN
COURT OF APPEALS

KRISTEN FLOOD and GLENN FLOOD,

Plaintiffs-Appellants,

v

JOHN-CHRISTOPHER SBRACCIA, KINROSS
CHARTER TOWNSHIP EMS, and KINROSS
CHARTER TOWNSHIP,

Defendants-Appellees.

UNPUBLISHED

May 29, 2008

No. 277579

Chippewa Circuit Court

LC No. 06-008521-NI

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

In this threshold case under the no-fault act,¹ plaintiffs appeal as of right from the circuit court's order granting summary disposition to defendants. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

I.. Facts of the Case

On April 1, 2003, plaintiff,² a Canadian citizen who was commuting to Sault Ste. Marie to work as an obstetrical nurse, was on duty in an ambulance transferring a patient when the ambulance went off the road and rolled over. Plaintiff suffered injuries to her back, neck, and hand. The individual defendant was driving the vehicle in the course of his employment with the municipal defendants.

Complaining of persistent pain and emotional stress, hampering her ability to perform routine tasks at home or continue in her chosen profession, plaintiff filed suit. Defendants moved for summary disposition. The court granted the motion, on the ground that plaintiff failed to offer evidence to show that an objectively manifested injury had prevented her from living her normal life. This appeal followed.

¹ MCL 500.3101 *et seq.*

² Because plaintiff Glenn Flood's interest in this case is derivative of that of plaintiff Kristen Flood, for convenience, in this opinion the singular "plaintiff" will refer to the latter exclusively.

II. Standard of Review

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

III. Noneconomic Loss Under the No-Fault Act

MCL 500.3135(1) provides that a person "remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." Subsection (7) states that, "'serious impairment of body function' means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." Actionable injuries may include psychological injuries with physical consequences. *Luce v Gerow*, 89 Mich App 546, 549-550; 280 NW2d 592 (1979). See also M Civ JI 36.02. MCL 500.3135(2) establishes that whether a person has suffered serious impairment of a body function is a question of law for the court, where there is no factual dispute concerning the nature and extent of the injuries, or where no such factual dispute is material to the question whether the person has suffered serious impairment of a body function. Accordingly, "the issue . . . should be submitted to the jury only when the trial court determines that an 'outcome-determinative genuine factual dispute' exists." *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001), quoting *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000).

Our Supreme Court's decision in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), indicates that the conditions for reinstating tort liability under the no-fault act are not lightly to be found. "Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if . . . the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's 'general ability' to lead his normal life has not been affected" for purposes of establishing a serious impairment. *Id.* at 131.

The following nonexhaustive list of objective factors may be of assistance in evaluating whether the plaintiff's "general ability" to conduct the course of his normal life has been affected: (a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery. [*Id.* at 133 (footnote omitted).]

The focus is not on the plaintiff's subjective pain and suffering, but on injuries that actually affect the functioning of the body. *Miller, supra* at 249. To be actionable, residual impairments based on perceived pain are a function of "physician-imposed restrictions," not "[s]elf-imposed restrictions." *Kreiner, supra* at 133 n 17.

In this case, plaintiff complains of many residual impairments, but she testified on deposition that, but for employment disability for the first four weeks, the accident resulted in no physician-imposed restrictions. Further, radiology studies and other tests were unremarkable. Plaintiff asserts that she had hoped for a career as an obstetrical nurse, and suggests that her change to other employment was necessitated by her physical and emotional injuries from the accident. However, at deposition, plaintiff testified that, two weeks after the accident, she took and failed a written examination that she was required to pass to maintain her employment as an Michigan obstetrical nurse, and she showed no inclination to resume that career objective.

Plaintiff's medical records show steady improvement, to where, on October 25, 2005, plaintiff's physician reported on plaintiff as follows: "[F]eels she is treated back to her normal off med. Sleeping well. . . . Migraines are well controlled. Satisfied with the treatment plan. Work is going well. Home going well."

Because plaintiff's physical and emotional discomforts resulting from the accident have not changed the trajectory of her life, the trial court correctly held that her injuries were not actionable under the no-fault act. *Kreiner, supra* at 131.

IV. Economic Loss Under the No-Fault Act

A plaintiff may recover economic damages for work loss in excess of three years even if that plaintiff is not entitled to noneconomic damages for serious impairment of body function. *Cochran v Myers*, 146 Mich App 729, 731; 381 NW2d 800 (1985). MCL 500.3107(1)(b) provides that personal protection insurance benefits are payable for "[w]ork loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured." Subsection (c) in turn adds that benefits are payable for "[e]xpenses not exceeding \$20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that . . . an injured person would have performed during the first 3 years after the date of the accident . . . for the benefit of himself or herself" MCL 500.3135(3)(c) confirms that the general abolition of tort liability under the no-fault act does not extend to "[d]amages for allowable expenses [and] work loss . . . as defined in section[] 3107 . . . in excess of the daily [or] 3-year limitations" set forth therein.

In this case, plaintiff reports that she had earned \$23 per hour as an obstetrical nurse, but only \$20 per hour in her current employment, and asserts that the difference constitutes economic damages from the accident. However, as noted above, plaintiff's failure to perfect her licensing requirements better accounts for her changed employment than does the accident.

Plaintiff otherwise asserts that, in light of her reduced ability to perform household services, a jury could reasonably conclude that excess replacement services are warranted. However, plaintiff fails to document any such accident-related expenses to date. Given her apparent avoidance of such expenses so far, a jury could hardly conclude that she would suddenly become burdened with such expenses in the future.

For these reasons, the trial court properly granted summary disposition to defendants.

Affirmed.

/s/ Alton T. Davis

/s/ Christopher M. Murray

/s/ Jane M. Beckering